IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2044 of 2006

State of Maharashtra Applicant
Vs.
Suresh Bapu Moghe & ors. Respondents

Mrs.P.H.Kantharia, APP for State.
Mr.A.B.Vagyani for resp.nos.1 to 5.

CORAM: B.H.MARLAPALLE & R.S. MOHITE, JJ.

February 13, 2007.

P.C.

. Heard Mrs.Kantharia, the learned APP and Mr. Vagyani, the learned counsel appearing for the respondent nos.1 to 5.

. The respondents-accused came to be tried in Sessions Case No.82 of 2005 by the learned VIth Ad-hoc Assistant Sessions Judge at Kolhapur for the offences punishable under Sections 395, 342, 504, 506, 323 and 365 read with Section 34 of IPC and the trial resulted in acquittal as per the judgment and order dated 2/1/2006. Hence this application for leave to appeal under Section 378(3) of Cr.P.C. by the State.

. In all seven witnesses were examined by the prosecution but it relied upon the testimony of PW 1

- Abhaykumar, PW 5 Sunil Chougule and PW 6 Vidhyadhar Patil in addition to the medical evidence of PW 4 Dr.Dilip Joshi. FIR was lodged on 5/2/2005 against unknown persons and the incident was claimed to have taken place on 4/2/2005 between 9.30 a.m. to 10.15 a.m. at village Kunthugiri. Complainant Abhaykumar along with his friends PW 5 Sunil Chougule and PW 6 Vidhyadhar Patil had gone to village Alate on 4/2/2005 for distribution of leaflets and they could not identify accused nos.3 to 5 though they identified accused nos.1 and 2 in the T.I. parade. Under these circumstances, the offence of robbery could not be established as the ingredients of Section 395 of IPC were not proved. It was the case of the complainant Abhaykumar that accused no.1 Suresh had snatched his mobile handset and this could not be proved as admittedly mobile bearing no.9888438537 was in possession of the complainant and was in working conditions and PW 7 Ashok Belawate did not seize the said mobile. The trial Court, therefore, discarded the testimony of PW 1 Abhaykumar and PW 6 Vidhyadhar Patil and held that the offences punishable under Sections 392, 384 and 379 of IPC could not be proved.

. The reasoning set out by the trial Court in support of its findings of acquittal do not call for reconsideration at the hands of this Court and, therefore,there is no case made out to grant leave to appeal.

. The application is, therefore, rejected.

(R.S.MOHITE,J.) (B.H.MARLAPALLE,J.)